

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WILLIAM H. BROWN TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 52494</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 29, 2010, Karen E. Hart and Debra A. Baumbach presiding. Petitioner was represented by Kevin J. O’Brien, Esq. Respondent was represented by Marcus A. McAskin, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**33650 Co. Rd. 77, Lake George, Colorado
(Park County Schedule No. R0020993)**

The subject property is located in Landis Ranch Estates, Lake George. The subject consists of a log-frame, raised, ranch-style residence constructed in 1969, with 1,028 square feet of living area and an unfinished basement area of 238 square feet. The subject is situated on a 14.82 acre site.

Petitioner presented an indicated value of \$103,310.00 based on a statistical analysis involving 176 residential sales from the Park County Assessor’s Office. Petitioner is contesting the land portion of the valuation.

Petitioner’s witness, Mr. William H. Brown testified the subject is located in a subdivision that originally was a 330 acre cattle ranch owned by Mr. Ray Landis. Mr. Landis subdivided the ranch into 32 parcels ranging in varying sizes. The parcels are connected by a single lane dirt road maintained by the homeowners’ association. The Tarryall River runs through the development and residences have fishing rights as well as access to other recreational activities. Respondent has reported that the subject is located in a gated community but the only gate is an old pasture gate with

chains and padlock. The community primarily consists of rustic cabins used for recreational purposes and does not represent an upscale gated community. The homeowners' covenants restrict the subject parcel to one dwelling and no subdividing.

Mr. Brown testified the subject property has steep terrain with only a small area that is flat enough to build with room to accommodate three or four cars. There is no potential development use of the land and the soil quality is poor.

Petitioner argued the subject's land value has increased over 78% and is unsupported from the sales in the area. In valuing the subject property, Petitioner reviewed 176 residential sales obtained from Park County Assessor's office. There were no sales during the time frame in the subject's subdivision. In the initial review, the first ten and the last ten sales were considered indicating that eleven of the twenty sales were assessed lower than the purchase price. The market sample was increased to fifty-six sales with an indication of over one-half valued less than the purchase price. Petitioner contends this was a strong indication the overall valuations in the area were unfair and unequal. Additionally, Respondent's Sale 1 was not an arm's-length transaction because it was between family members and should have been eliminated from the analysis to value the subject property.

Petitioner then took the same twenty sales from the first analysis and averaged the price per acre for an indicated value of \$1,970.00 per acre. Petitioner believes the improvements have decreased in value approximately 80% from the value assigned in 2007, for a total estimated value of \$103,310.00. After careful review he would agree to Respondent's improvement value of \$87,545.00 and \$1,970.00 per acre for a total indicated value of \$116,740.00.

Petitioner is requesting a 2009 actual value of \$116,740.00 for the subject property for tax year 2009.

Respondent's witness, Ms. Lorie Bobilya, Data Collector/Staff Appraiser with the Park County Assessor's Office, presented five comparable sales ranging in sales price from \$225,000.00 to \$396,000.00 and in size from 640 to 1,724 square feet. The sales ranged in site size from 1 acre to 17.83 acres. After adjustments were made, the sales ranged from \$322,771.00 to \$436,203.00.

Ms. Bobilya testified the subject property is located in a highly desirable private gated subdivision consisting of full time and second home retreats. The Tarryall River runs through the neighborhood and it borders Pike National Forest. The homeowners enjoy fishing on the river and other recreational activities. The homeowners' association fees include stocking the river with fish and maintenance of the main arterial road.

Respondent selected comparable sales located within close proximity to the subject and that were similar in size, style, quality and market appeal. Adjustments were made through paired sales analysis for differences in size and it was determined there was a 13% difference attributed to a river front versus other recreational and ski locations. Other adjustments included condition, living area, basement area, finished porches and other miscellaneous improvements. There was insufficient market data to support market appreciation, therefore no time adjustments were made.

In response to Petitioner's argument that Sale 1 was not an arm's-length transaction because it occurred between family members, Ms. Bobilya testified that in a conversation with the owner it was determined to be a suitable sale and therefore was included in the analysis. Additionally, many of Petitioner's sales are located on agricultural land representing lower land values and were not considered to be suitable sales.

Respondent assigned an actual value of \$356,161.00 to the subject property for tax year 2009.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2009.

Petitioner used an equalization argument in comparing assigned values. The Board can consider an equalization argument if evidence or testimony shows that the assigned values of the equalization comparables were derived by application of the appropriate approach to value and that each of the comparables was correctly valued. Since that evidence and testimony was not presented, the Board gives minimal weight to the equalization argument presented by Petitioner. Additionally, the Board gives limited weight to Petitioner's methodology in averaging comparable sales. This is not appropriate appraisal methodology in determining valuation. Insufficient information regarding the sales was presented for the Board to apply appropriate adjustments.

Petitioner also argued for a percentage increase in the improvement value over the last valuation period. The Board is unable to consider this methodology as state statute requires use of the market approach to value residential property, considering sales of comparable properties.

The Board is also unable to consider the valuation of land and improvements separately. Land and improvements must be valued as an aggregate. "[A] party may seek review of only the total valuation for assessment, and not of the component parts of that total." *Cherne v. Bd. of Equalization*, 885 P.2d 258, 259 (Colo. App. 1994).

The Board is not convinced Respondent's Sale 1 was an arm's-length transaction and gives it minimal weight even though it was the only sale located within the subject's subdivision. The Board places little weight on Respondent's Sale 3 as it is only one acre in size compared to the subject property's 14.82 acres and therefore requires a large land size adjustment.

The Board places most weight on Respondent's Sales 2, 4 and 5. The Board does not consider the subject property to be in a gated community, as the gate was described as an old pasture gate with chain and padlock. The Board determines that the subject property value should come from the lower end of the sales range.

The Board concludes that the 2009 actual value of the subject property should be reduced to \$325,000.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$325,000.00.

The Park County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 13^m day of October 2010.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Debra A Baumbach

Debra A. Baumbach

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Amy Bruins

Amy Bruins

